

And the Leaves that are Green Turn to Brown – MLM Penny Auctions

© Jeffrey Babener 2012/2013

And the leaves that are green turn to brown

And they wither in the wind

And they crumble in your hands....

– Simon and Garfunkel

The recent SEC prosecution and demise of MLM penny auction business, Zeek Rewards, followed by dramatic changes in other copycat MLM penny auction programs, is the latest in a cycle that too often hits the MLM/Network Marketing/Direct Selling industry.

See the [SEC complaint against ZeekRewards](#). [PDF] Or, read the [FULL TEXT](#) online.

In general, the scenarios of pyramid schemes have roots going back more than 40 years to Dare to Be Great, a program in which individuals were invited to pay \$5,000 to attend training seminars, where they were trained to go find others to pay \$5,000 to attend the training seminars, and so on. In recent years, modern day pyramid versions of Dare To Be Great are merely variations of the same thing. In the cycle, which often lasts 12 to 24 months, reaching a crescendo in the last 6 months prior to shut down, individuals are hyped to pay large sums of money for worthless products or services, overpriced products or services, or even “air,” intangible rights, licenses, or online service packages. Huge commissions are paid for finding others to do the same. Companies camouflage the pyramid schemes, claiming to be legitimate network marketing companies. Sometimes they “drop” names of so called industry experts, pundits, leaders, or even attorneys, who seem to be complicit in allowing their association to create a veneer of legitimacy.

In the excitement of the “quick money,” prospects “buy into” the illusion... to a point that, when the pyramid collapses or is shut down by an AG, FTC or SEC, they are not sure whether their anger should be directed toward the promoters of the pyramid, and a top cadre of “pied piper,” “heavy hitters” and “industry celebrity cheerleaders with financial interests,” or whether they should accept the promoters defense that the demise is the result of overzealous government regulators.

Unfortunately, the “rationalization” is a delusion, and surprisingly, many individuals, so called *MLM Junkies*, who live at the periphery of the legitimate direct selling industry, are too quickly pulled in to the next “great opportunity,” and unfortunately, they bring with them many honest, hard working networkers who are caught up in the hysteria. Legitimate companies find some of

their best talent lured away – momentarily – until the collapse of the pyramid schemes, hoping that the next scam will not come along for a while.

But they keep coming and the cheerleaders keep cheering. They follow in the recent tradition of Gold Unlimited, SkyBiz, Equinox, Renaissance the Tax People, and most recently the onslaught of the MLM penny auction programs. And in the end, human greed for the quick money may be the answer, or as Shakespeare explained in *Julius Caesar*, *the fault Dear Brutus in is not the stars, but in ourselves*.

Although Zeek Rewards was closed precipitously by SEC enforcement action and consent settlement, legal history will only be written and adjudicated by the courts as to whether the program should take its place in the pantheon of other notorious programs. That analysis is not the function or purpose of this article.

Apart from some potential lottery issues, can a MLM penny auction service be properly marketed through MLM/network marketing? Yes.

However, the revenue stream for payment of commissions should derive from bid sales to real retail customers, who in turn use the bids. On the other hand, a program fueled by reps, who pay \$10,000 for so called sample or giveaway bids, and recruit other reps to do the same, from which the commission pool is paid, is really not the marketing of a service. Rather, it is payment into a pyramid scheme. Ponzi and Pyramid schemes are, by case law recognition, viewed as unregistered passive investment securities offerings that carry deserved civil and criminal penalties for active promoters, whether they are company organizers or merely conflicted cheerleader media publishers with financial interests.

Such schemes really have nothing to do with network marketing, MLM or direct selling. Hiding behind terms of legitimacy is a great disservice to a global direct selling industry that markets in excess of \$150 billion in real products and services through 90 million plus direct sellers. Such programs taint the recruiting environment and siphon finance and talent from “real” direct selling companies. In an era when NY Stock Exchange companies, such as [Herbalife](#) and [NuSkin](#), face short seller challenges in explaining the legitimate network marketing model, scams and schemes that parade as network marketing merely confuse global markets as to the legality of legitimate network marketing companies. Hiding such schemes behind terms like “freedom,” “entrepreneurial spirit,” “the American dream,” or “free market capitalism” is an unfortunate high jacking of a truly major indigenous American business marketing model.

Unfortunately, too many MLM penny auction models may fit the illegitimacy tests:

1. Pyramid: Large upfront cash investments by distributors, who realistically pay for the right to recruit others to do the same with a hope and prayer to make money off the subsequent recruits.
2. Ponzi: Payment of promised investment rewards to old investors with money from new investors.

3. Securities: Inducing passive investments with the expectation of return arising from the managerial efforts of the promoter or third parties. In addition, pyramids and Ponzi schemes, by definition, are also securities.

In the end, prospects should understand that true network marketing opportunities involve real products and services, real customers, and hard work. Scams and schemes and promises of something for nothing fit the scenario of *if it's too good to be true...*

Look for further follow up analysis of MLM penny auctions and other defunct programs at www.mlmlegal.com.

[Click here to view current headlines regarding ZeekRewards](#) and links to additional [articles on how to identify pyramid schemes](#).

Jeffrey A. Babener, of Portland, Oregon, is the principal attorney in the law firm of Babener & Associates. For more than 25 years, he has advised leading U.S. and foreign companies in the direct selling industry, including many members of the Direct Selling Association. He has lectured and published extensively on direct selling and many of his writings will be found at www.mlmlegal.com, of which he is Editor. He is a graduate of the University of Southern California Law School, where he was an editor of the USC Law Review.

www.mlmlegal.com

Welcome to MLM Legal - a valuable resource to the Multi-Level Marketing and Direct Sales Industry. Use this site to review interesting articles about this high growth industry. Keep current with the law and how it is affecting large and small companies throughout the United States. MLM Legal is sponsored by Jeffrey Babener of [Babener and Associates](#).



Jeffrey Babener
On Assignment

On any given day you can catch [Jeffrey Babener](#) lecturing on Network Marketing at the University of Texas or the University of Illinois, addressing thousands of distributors in Los Angeles, Bangkok, Tokyo and Russia, or writing a new book on Network Marketing, an article for Entrepreneur Magazine or a chapter for a University textbook. Over two decades he has served as marketing and legal advisor to some of the world's largest direct selling companies, the likes of Avon, Nikken, Melaleuca, Discovery Toys, NuSkin, and he has provided counsel to the most successful telecom network marketing companies...Excel, ACN, World Connect, ITI, AOL Select and Network 2000. An active spokesperson for the industry, he has assisted in new legislation and served on the Lawyer's Council, Government Relations Committee and Internet Task Force of the Direct Selling Association (DSA) as well as serving as General Counsel for the Multilevel Marketing International Association. He is an MLM attorney supplier member of the DSA and has served as legal counsel and MLM consultant on MLM law issues for many DSA companies.

www.mlmlegal.com